IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 22.08.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.MANIKUMAR

Habeas Corpus Petition No.557 of 2006

Sundari ... Petitioner

vs.

1. State of Tamil Nadu
represented by
Secretary to Government,
Prohibition and Excise Department,
Fort St. George,
Chennai-600 009.

2. The District Magistrate
and District Collector,
Tiruvarur, Tiruvarur District. ... Respondents

Petition under Article 226 of the Constitution of India for the issuance of a writ of habeas corpus to call for the records in connection with the order of detention passed by the second respondent dated 09.05.2006 in C.O.C. No.07/2006 against the petitioner's husband Soundararajan, son of Santhanam, Male, aged 42 years, who is confined at Central Prison, Trichy, set aside the same, direct the respondents to produce him before Court and set him at liberty.

For Petitioner : Mr.Abudukumar Rajarathinam for
Mr.A.Vijay

For Respondents : Mr.M.Babu Muthu Meeran,
Additional Public Prosecutor.

O R D E R

(Order of the Court was made by P.SATHASIVAM, J.)

The petitioner herein challenges the impugned order of detention dated 09.05.2006, detaining her husband by name

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Soundararajan as 'Video Pirate' as contemplated under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2. Heard learned counsel for the petitioner as well as learned Additional Public Prosecutor for the respondents.

3. At the foremost, Mr.Abudukumar Rajarathinam, learned counsel appearing for the petitioner, by drawing our attention to the reference made in para No.5 of the grounds of detention, contended that though the Detaining Authority has very much relied upon the Bail Application and also the fact that the same was pending on the date of passing of the detention order, the Authority was not provided with the said document and the detenu was also not supplied with a copy of the same in spite of the specific request made by way of representation dated 25.05.2006. According to him, inasmuch as the Detaining Authority has very much relied on the Bail Application, failure to consider the same by the said authority and non-supply of copy of the document to the detenu would vitiate the detention order.

4. In view of the above contention, we verified the averments made in paragraph No.5 of the grounds of detention. As rightly pointed out, the Detaining Authority heavily relied on the fact that the detenu moved Bail Application before the Judicial Magistrate's Court, Thiruvarur, in C.M.P. No.2141 of 2006 and that the same was pending on the date of passing of the detention order. It is not in dispute that by relying on the same and after finding that the detenu is likely to come out on bail for the said case in Crime No.3/2006, CBCID, Cuddalore, and in that event, he would indulge in activities prejudicial to the maintenance of public order, the Detaining Authority clamped the order of detention on the detenu. We accept the said contention and hold that, when the Detaining Authority relied on the pendency of bail application; non-placing of the same before the said authority and non-supply of copy of the document to the detenu vitiates the detention order.

5. It is also relevant to point out that though in the representation dated 25.05.2006, a specific request was made for supply of copy of the bail application, in the reply dated, 03.07.2006, the Government informed the petitioner to get a copy of the same from the court concerned. The said reply of the Government cannot be accepted. It is not in dispute that in matters like this, courts have taken a view that all the relied upon documents are to be placed before the Detaining Authority and copies thereof shall be supplied to the detenu within the prescribed time and that failure to do so would vitiate the detention order.

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Accordingly, the Habeas Corpus Petition is allowed and the impugned order of detention is set aside. The detenu is directed to be set at liberty forthwith from the custody unless he is required in some other case or cause.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

JI.

To
1. The Secretary to the Government of TN, Prohibition and Excise Department, Fort St. George, Chennai 600 009.
2. The District Collector and District Magistrate, Thiruvarur.
3. The Superintendent, Central Prison, Trichy.
(In duplicate for communication to the detenu)
4. The Joint Secretary to Government, Public (Law and Order) Fort St. George, Chennai-9.
5. The Public Prosecutor, High Court, Madras.

+1cc to Mr.A.Vijay, Advocate Sr 37862

AKM (CO)
km/30.8.

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